If it refuses to settle the entire controversy when the parties are properly before it the court subjects itself to public criticism on the ground that its decision is over-technical. On the other hand if it does determine the matter a precedent is furnished which in some controversy of a different nature may result in depriving a litigant of some substantial right. G. C. G.

REMOVING A CLOUD ON TITLE TO PERSONALTY.—The jurisdiction of a court of equity to remove a cloud upon title in the case of real property is founded on the inadequacy of the remedy at law, and does not arise when the plaintiff has an adequate and complete remedy at law. *Munson* v. *Munson,* 28 Conn. 582, 73 Am. Dec. 693. This limitation on the right to maintain such an action must be kept in mind in a discussion of the right to bring a similar action in the case of personal property.

In the case of the *Central Savings Bank & Trust Co. et al.,* v. *Amalgamated Society of Carpenters and Joiners,* (Colo. App. 1913), 134 Pac. 1007, the plaintiffs had deposited a sum of money with the defendant, against which sum certain officers of the plaintiff society were empowered to draw checks. Later a split occurred in the plaintiff society which resulted in the withdrawing of a number of the members, among them being the officers who originally made the deposit. A dispute arose as to which set of members was entitled to the money, and the bank refused to honor any checks, or to pay over the money. Thereupon the Amalgamated Society brought an action to quiet title to the funds in the bank. In refusing relief, the court lays down the general rule that ordinarily an action to quiet title to personal property will not lie; and says that the few cases where the right to maintain the action has been upheld have all been of such a nature that the plaintiff had no sufficient or adequate legal remedy.

None of the cases cited by the court in support of the general rule laid down, are in point. In the case of *Fudikar* v. *East Riverside Co.,* 109 Cal. 29, 41 Pac. 1024, the property in question was held to be real property, and the remedy was refused because of defective pleadings. The case of *Red Diamond Clothing Co.* v. *Steidemann,* 120 Mo. App. 525, 97 S. W. 220, held that the action would not lie in the case of personal property in the possession of the plaintiff; but the cloud, to remove which the suit was brought, was a mere verbal claim by the defendants, and so not properly a cloud at all. In *State ex rel* v. *Wood,* 155 Mo. 425, 56 S. W. 474, 48 L. R. A. 596, there was a statement to the effect that such an action would not lie in the case of personal property, but the statement was mere dictum; for the court goes on to say that the bill showed on its face that the so-called cloud was made a personal charge against the plaintiff and not against his property.

There seems to be no doubt that the courts of a number of states think that the general rule is the one mentioned in the principal case; and in nearly every case where the right has been denied, will be found *dicta* to the effect that the action will not lie in the case of personal property. Yet we have been unable to find a single case where the court has denied the right *merely on the ground that the property in question was personal property.*

The court in the principal case, however, recognizes that there are exceptions to this general rule; and it refuses relief rather on the ground that the plaintiff here had an adequate remedy at law, than because the property was personal in its nature. In *Magnusen* v. *Clithero,* 101 Wis. 551, 77 N. W. 882, an action was brought to quiet title to a mortgage and certain notes in the possession of the plaintiff; and the relief was granted on the ground that the plaintiff had no adequate remedy at law. In *N. Y., N. H. & H. R. R. Co.* v. *Schuyler,* 17 N. Y. 592, it appeared that a number of counterfeit stock certificates of the plaintiff corporation had been issued; and even though the plaintiff could have defended, successfully, suits at law for the non-recognition of the false certificates, it was held that this remedy at law was not as adequate and complete as the circumstances of the case required. So the plaintiff was permitted to maintain his suit in chancery for the cancellation of the counterfeit certificates. Other cases where the right has been recognized are *Voss et al.* v. *Murray et al.,* 50 Oh. St. 19, 32 N. E. 1112, where plaintiff was allowed to remove a cloud upon attached property in the hands of a sheriff, the cloud being created by a recorded mortgage; and *Sherman* v. *Fitch,* 98 Mass. 59, where the cloud was created by a chattel mortgage. See also *Town of Springfield* v. *Teutonic Savings Bank,* 75 N. Y. 397; *Rosenbaum* v. *Foss,* 4 S. D. 184, 56 N. W. 114; *Stebbins* v. *Perry County,* 167 Ill. 567, 47 N. E. 1048; *Martin & Earle* v. *Maxwell et al.,* 86 S. C. 1, 67 S. E. 962. In the last case, the court says that it will allow suits to remove a cloud on personal property to be maintained, since any distinction between real and personal property in this respect would be purely artificial, and tend to hinder the practical administration of justice. Mr. POMEROY, in his EQUITABLE REMEDIES, § 729, says that there seems no good reason for thus restricting the jurisdiction of equity in such cases.

The cases are very few, if indeed there are any, where the court has refused to allow a party to remove a cloud on personal property merely because the property was personal. And the only other reason for refusing relief given in many other cases, such as *Sayre* v. *Tompkins,* 23 Mo. 443, as well as in the principal case, namely that the plaintiff had an adequate and complete remedy at law, applies as well to real as to personal property, as noted above.

The reason for the distinction between real and personal property in this respect is stated in *Fonda* v. *Sage,* 48 N. Y. 173, to be that a claim involving title to personal property will, it is supposed, inflict but little injury, while a claim involving the title to real property may seriously impair the value of the realty. This may have been true at the time when this rule was evolved; but it is obvious from an examination of such cases as *N. Y., N. H. & H. R. R. Co.* v. *Schuyler,* supra, and *Stebbins* v. *Perry County,* supra, that the reasons on which the above rule is based no longer exist. The reasons for the rule being gone, the rule, if, indeed, it still exists, should be disregarded also. A party should be allowed to remove a cloud from the title to either real or personal property alike, subject however to the restrictions and limitations on the right, which now exist in the case of real property. S. E. G.